TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL NOTE

HB 24 - SB 1256

February 28, 2021

SUMMARY OF BILL: Establishes criteria governing agreements between certain utilities and railroads for access to rights-of-way (ROW) and a process by which terms of such agreements may be appealed to the Tennessee Department of Transportation (TDOT).

ESTIMATED FISCAL IMPACT:

Increase State Expenditures – $1,294,500/FY21-22/Highway Fund
$1,203,300/FY22-23 and Subsequent Years/ Highway Fund

Decrease Local Expenditures –
Exceeds $250,000/FY22-23
Exceeds $500,000/FY23-24 and Subsequent Years

Assumptions relative to agreement structure:

- The proposed language applies to agreements:
  - Concerning infrastructure used for the delivery of cable, heat, light, power, telecommunications, or water located within a railroad ROW located on either public or private property;
  - Between railroads and owners of such infrastructure, including privately-owned, for-profit utilities and local utility districts or municipalities; and
  - Which are entered into or renewed on or after January 1, 2022.
- The proposed language establishes the following criteria for agreements entered into or renewed on or after January 1, 2022, unless both parties agree otherwise:
  - For ROW crossings in public property, a one-time payment of $500 per crossing paid by the infrastructure owner to the railroad;
  - For ROW crossing on private property, a one-time payment paid by the infrastructure owner to the railroad equal to the cost of locating infrastructure within a ROW;
  - Parties responsible for damage to grade crossing markings or signs incurred during construction within the ROW are responsible for the replacement of such markings and signs;
  - Railroads and infrastructure owners are required to reimburse the other entity for expenses incurred as a result of emergencies or miscellaneous expenses incurred by the railroad or infrastructure owner;

    - Prohibits the railroad from requiring gas utility infrastructure located within the ROW to be encased in steel pipeline;
    - Railroads and infrastructure owners will set the amount and scope of insurance each entity carries; and
    - Railroads and infrastructure owners will repair and maintain their own property.
- The proposed language establishes a process by which a railroad may petition TDOT for greater compensation if the railroad and the infrastructure owner cannot agree.
- This analysis assumes:
    - Agreements currently exist between the majority of railroads and infrastructure owners;
    - Separate agreements are established for each separate crossing of a railroad ROW;
    - The terms, conditions, and expiration dates of such agreements vary by ROW location, railroad owner, infrastructure owner, and type of infrastructure;
    - Such agreements establish compensation paid by the infrastructure owner to the railroad for access to the railroad's ROW; and
    - Rates of compensation vary and may be one-time or recurring throughout the term of the agreement.

Assumptions relative to local utility districts and municipalities:

- The proposed language is applicable to infrastructure owned by any utility district or municipality.
- For purposes of this analysis, it is assumed the proposed language:
    - Is not applicable to agreements between railroads and metropolitan governments, counties, or special purpose local governmental utility entities; and
    - Includes infrastructure providing sewer service which is owned by utility districts and municipalities.
- Based on information provided by the Comptroller of the Treasury, the following illustrates the how many utility districts and municipalities provide each of the different types of applicable infrastructure:

Owner	Water	Sewer	Gas	Electricity	Total
Utility District	149	21	23	0	193
Municipality	124	138	68	48	378
					571

- The number of municipalities owning telecommunications infrastructure is unknown.
- It is estimated that there is more than 3,000 miles of railroad track in Tennessee owned by approximately 25 railroad companies.
- While the total number of current agreements between railroads and local utility districts and municipalities is unknown, it is reasonably estimated to exceed 10,000 statewide.
- The term lengths, conditions, and compensation schemes of current agreements are unknown; however, the proposed legislation is estimated to result in a decrease in local expenditures which would have occurred in the absence of this legislation.

- The extent of any decrease in expenditures experienced by individual utility districts and municipalities will be dependent upon the terms and conditions of current agreements, the number of agreements held, and the terms and conditions which will be agreed upon or determined by TDOT after January 1, 2022. The timing of any decrease in local expenditures will be dependent upon when current agreements are renewed or new agreements are entered into.
- A precise decrease in local expenditures cannot reasonably be determined due to multiple unknown variables; however, in any given fiscal year is reasonably estimated to exceed $500,000 statewide.
- Due to the January 1, 2022 effective date, the decrease in local expenditures for FY22-23 will be half the impact of a full fiscal year; therefore, the decrease in local expenditures for FY22-23 is estimated to be $250,000 ($500,000 x 50.0%).

Assumptions relative to TDOT:

- The proposed language authorizes a railroad to petition TDOT for compensation greater than that which is established by the proposed legislation.
- TDOT will also be authorized to make certain determinations regarding the infrastructure placed within railroad ROWs.
- TDOT will require three additional ROW Agent 4 positions per region resulting in a recurring increase in state expenditures of $931,464 {[($60,780 salary + $16,842 benefits) x 3 positions] x 4 regions}.
- TDOT will require one geographically-based statistical information (GIS) Analyst per region resulting in a recurring increase in state expenditures of $271,864 [($52,500 salary + $15,466 benefits) x 4 regions].
- One-time costs associated with computer and office equipment for all positions is estimated to be $91,200 ($5,700 x 16 positions).
- The total increase in state expenditures to the Highway Fund is estimated to be $1,294,528 ($931,464 + $271,864 + $91,200) in FY21-22.
- The total recurring increase in state expenditures to the Highway Fund is estimated to be $1,203,328 ($931,464 + $271,864) in FY22-23 and subsequent years.

IMPACT TO COMMERCE:

Decrease Business Expenditures –

Exceeds $50,000/FY21-22
Exceeds $100,000/FY22-23 and Subsequent Years

Decrease Business Revenue –

Exceeds $300,000/FY21-22
Exceeds $600,000/FY22-23 and Subsequent Years

Assumptions:

- The proposed language will result in a decrease in business expenditures for privately-owned, for-profit utilities owning such infrastructure.
- While the total number of current agreements between railroad and such infrastructure owners is unknown, it is reasonably estimated to exceed 2,500 statewide.
- The term lengths, conditions, and compensation schemes of current agreements are unknown; however, the proposed legislation is estimated to result in a decrease in expenditures for privately-owned, for-profit infrastructure owners which would have occurred in the absence of this legislation.
- The extent of any decrease in expenditures experienced by infrastructure owners will be dependent upon the terms and conditions of current agreements, the number of agreements held, and the terms and conditions which will be agreed upon or determined by TDOT after January 1, 2022. The timing of any decrease in businesses expenditures will be dependent upon when current agreements are renewed or new agreements are entered into.
- A precise decrease in business expenditures cannot reasonably be determined due to multiple unknown variables; however, in any given fiscal year is reasonably estimated to exceed $100,000 statewide.
- Due to the January 1, 2022 effective date, the decrease in business expenditures for FY22-23 will be half the impact of a full fiscal year; therefore, the decrease in business expenditures for FY22-23 will be $50,000 ($100,000 x 50.0%).
- The proposed legislation will result in an equal corresponding decrease in business revenue experienced by railroad companies. Based on estimated decreases in expenditures for infrastructure owners, the decrease in business revenue for railroad companies is estimated to be $600,000 ($500,000 local infrastructure owners + $100,000 privately-owned, for-profit utility infrastructure owners) beginning in FY22-23 and occurring in subsequent years.
- Such business revenues are estimated to decrease by half in FY21-22, resulting in a decrease of $300,000 ($600,000 x 50.0%).

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Bojan Savic

Bojan Savic, Interim Executive Director

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